UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CALL CENTER TECHNOLOGIES, INC.,	:	
Plaintiff,	:	
v.	:	**No. 3:03CV01036(DJS)**
GRAND ADVENTURES TOUR & TRAVEL PUBLISHING CORPORATION, INC. and INTERLINE TRAVEL & TOUR, INC.,	:	
Defendants.	:	

MEMORANDUM OF DECISION AND ORDER

The plaintiff, Call Center Technologies, Inc. ("Call Center"), brought this action against the defendants, Grand Adventures Tour & Travel Publishing Corporation, Inc. ("GATT") and Interline Travel & Tour, Inc. ("Interline") alleging breach of contract and successor liability pursuant to Connecticut law.[1] Call Center maintained that GATT, which is essentially a defunct company, had breached a contract with Call Center, and that Interline was liable for this alleged breach because Interline is a successor company to GATT. Thereafter, Call Center moved for

[1] This case was originally filed against GATT in the Connecticut Superior Court, Judicial District of Danbury ("the State Court Proceeding"). In the State Court Proceeding, a default against GATT entered because GATT had failed to appear or plead. Subsequently, Call Center was permitted to add Interline as a defendant to the State Court Proceeding, and Call Center amended its complaint accordingly. Interline entered its appearance in the State Court Proceeding and thereafter removed the case to this Court pursuant to 28 U.S.C. § 1332, representing that the Court had subject matter jurisdiction because the matter in controversy exceeded $75,000 and was between entities that are citizens of different States.

the entry of a default judgment against GATT in the amount of $560,576.22, and Interline moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. On February 18, 2009, the Court granted Call Center's motion for the entry of a default judgment against GATT[2] and granted Interline's motion for summary judgment. See Call Center Techs., Inc. v. Grand Adventures Tour & Travel Publ'g Corp., Inc., 599 F. Supp. 2d 286 (D. Conn. 2009).

On March 12, 2009, Call Center moved pursuant to Rule 60(b)(4) of the Federal Rules of Civil Procedure to vacate the Court's February 18, 2009 decision and judgment and remand this action to the Connecticut Superior Court. (See Dkt. #s 209 & 210.) Because, however, Call Center had not filed its Rule 60 motion within ten days after entry of the judgment, the time to file an appeal continued to run and did not toll. See Fed. R. App. P. 4(a)(4)(A)(vi). Thus, Call Center also filed a notice of appeal. (Dkt. # 212.) Interline, in response, filed an opposition to Call Center's motion to vacate and remand (dkt. # 214), and moved, both with this Court (see Dkt. # 215) and with the Second Circuit, to sever and dismiss GATT from this case.

The Second Circuit motions panel subsequently issued an order on May 8, 2009, denying the motion to sever pending before it (See Dkt. # 220), and as a result, on June 5, 2009 this Court

[2]GATT failed to appear or otherwise plead in this case.

deemed moot the motion to sever pending here, see Call Center Techs., Inc. v. Grand Adventures Tour & Travel Publ'g Corp., Inc., No. 3:03CV01036(DJS), 2009 WL 1588438, at *3 (D. Conn. June 5, 2009). Also on June 5, 2009, the Second Circuit issued an order staying the appellate proceedings until thirty days after this Court ruled on the pending motion to vacate and remand, and on the motion to sever. (Dkt. # 221.)

Interline now moves for reconsideration of that portion of this Court's order deeming moot the motion to sever. (Dkt. # 223). Interline contends that the May 8, 2009 order from the Second Circuit's motions panel was only provisional and interlocutory, and that the Second Circuit's June 5, 2009 order clearly conferred jurisdiction upon this Court to rule on the motion to sever.[3] The Court agrees with Interline. The Second Circuit clearly contemplated that this Court would rule on the motion to sever. The Court also finds persuasive the case law to which Interline cites on this issue, and sees little need for an extensive legal analysis here. Thus, the Court grants the motion to reconsider and shall reach the merits of Interline's motion along with Call Center's motions to vacate and remand.

There were no federal questions at issue in this case.

[3]The Court notes that it did not overlook the Second Circuit's June 5, 2009 order when it issued its June 5, 2009 order deeming moot the motion to sever, because at the time the undersigned issued the June 5, 2009 ruling, the Second Circuit's order had not yet been entered on this Court's docket. Thus, at the time the Court drafted its order, it did not have the benefit of the Second Circuit's instructions.

Instead, this case was removed from state court to federal court because the matter in controversy exceeded $75,000 and Call Center, GATT, and Interline (apparently) were citizens of different states. See 28 U.S.C. § 1332 (establishing, in relevant part, that diversity jurisdiction exists over civil actions between "citizens of different States" and between "citizens of a State and citizens or subjects of a foreign state.") In fact, the Court's summary judgment decision indicated as such, noting Call Center as a Delaware corporation, GATT as an Oregon corporation, and Interline as a Texas corporation. See Call Center, 599 F. Supp. 2d at 290. Now, however, after the Court has issued a final judgment in this matter, Call Center has presented evidence that GATT was not an Oregon corporation but in fact a Delaware corporation. Interline has not contested this evidence. Thus, it appears that, at the time this case was filed, there was no diversity of citizenship between Call Center and GATT.

The Court begins its analysis with the "axiomatic observation that diversity jurisdiction is available only when all adverse parties to a litigation are completely diverse in their citizenships." Herrick Co., Inc. v. SCS Communications, Inc., 251 F.3d 315, 322 (2d Cir. 2001). "It has long been the case that 'the jurisdiction of the court depends upon the state of things at the time of the action brought.'" Grupo Dataflux v.

Atlas Global Group, L.P., 541 U.S. 567, 570 (2004) (quoting Mollan v. Torrance, 22 U.S. (9 Wheat.) 537, 539 (1824)). "Issues relating to subject matter jurisdiction may be raised at any time, even on appeal, and even by the court sua sponte." Cave v. E. Meadow Union Free Sch. Dist., 514 F.3d 240, 250 (2d Cir. 2008) (citing Liberty Mut. Ins. Co. v. Wetzel, 424 U.S. 737, 740 (1976)). "If a court perceives at any stage of the proceedings that it lacks subject matter jurisdiction, then it must take proper notice of the defect by dismissing the action." Id. Furthermore, "Federal Rule of Civil Procedure 12(h)(3) provides that '[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court *must* dismiss the action.'" Id. (quoting Fed. R. Civ. P. 12(h)(3)) (emphasis added).

Nonetheless, the Second Circuit has noted that

> [t]here are, however, several well-recognized exceptions to this rule, which allow federal courts, under certain circumstances to cure defects of federal jurisdiction (a) by establishing ex post the original existence of the required jurisdictional facts, see Jacobs v. Patent Enforcement Fund, Inc., 230 F.3d 565, 567 (2d Cir. 2000), or (b) by dismissing jurisdictional spoilers, nunc pro tunc, pursuant to Fed. R. Civ. P. 21, see Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826 . . . (1989).

Herrick, 251 F.3d at 329.[4] In Newman-Green, the Supreme Court provided the courts "with the power to cure jurisdictional defects[,] even on appeal, and this power is backed by weighty

[4]The Court notes that the first exception, i.e., establishing ex post the original existence of the required jurisdictional facts, is not at issue here.

reasons." Id. at 330. "As the Supreme Court has remarked, '[o]nce a diversity case has been tried in federal court with rules of decision supplied by state law . . . considerations of finality, efficiency, and economy become overwhelming.'" Id. (quoting Caterpillar Inc. v. Lewis, 519 U.S. 61, 75 (1996)). "Similarly, the [Supreme] Court has emphasized that 'requiring dismissal after years of litigation would impose unnecessary and wasteful burdens on the parties, judges, and other litigants waiting for judicial attention.'" Id. (quoting Newman-Green, 490 U.S. at 836). "At the same time, however, the problems of defective jurisdiction that this power was designed to address are themselves weighty, being tied to the fundamental constitutional idea that federal courts have only limited jurisdiction . . . ." Id. at 330-31 (citation omitted).

Under Rule 21 of the Federal Rules of Civil Procedure, the Court may "[o]n motion or on its own, . . . at any time, on just terms, add or drop a party." Fed. R. Civ. P. 21. The Court "may also sever any claim against a party." Id. Rule 21 "allows a court to drop a nondiverse party at any time to preserve diversity jurisdiction, . . . provided the nondiverse party is not 'indispensable'[5] under Rule 19(b), see Curley v. Brignoli,

[5]"Effective December 1, 2007, Rule 19 (b) no longer uses the term 'indispensable.'...There is no substantive difference between the present rule [which uses the term 'required party'] and the rule as applied...prior to the 2007 amendment. See Republic of Philippines v. Pimentel,- - -U.S. - - -, 128 S.Ct. 2180, 2184, 171 L.Ed. 2d 131 (2008)." CP Solutions PTE, Ltd. v. Gen. Elec. Co., 553 F.3d 156, 159 n.2 (2d Cir. 2009).

Curley & Roberts Assocs., 915 F.2d 81, 89 (2d Cir. 1990)." CP Solutions PTE, Ltd. v. Gen. Elec. Co., 553 F.3d 156, 159 (2d Cir. 2009) (footnote omitted). To determine whether a party is "indispensable" or "required" under Rule 19(b), the Court must consider four factors:

> (1) whether a judgment rendered in a person's absence might prejudice that person or parties to the action, (2) the extent to which any prejudice could be alleviated, (3) whether a judgment in the person's absence would be adequate, and (4) whether the plaintiff would have an adequate remedy if the court dismissed the suit.

Id. (citing Fed. R. Civ. P. 19(b)).

It is undisputed that GATT's presence as a party to this case creates a jurisdictional defect that, if not cured, would require the Court to vacate its judgment and remand the case to state court. It is also undisputed that dropping GATT as a party to this case would cure the jurisdictional defect. The question then becomes whether this Court can and should drop GATT. Interline argues that the Court should drop GATT because it is not an indispensable party. According to Interline, "GATT, a defunct publicly-traded company, never appeared in this action." (Dkt. # 215, p. 9.) Moreover, Interline maintains that Call Center "will not be prejudiced if GATT is dismissed from this suit . . ., particularly since [Call Center] seeks the exact same relief against GATT—dismissal—by way of its own motions to vacate and remand." (Id.) Call Center argues that, given the specifics

of this case, the exceptions allowing federal courts to cure jurisdictional deficiencies do not apply here, and even if those exceptions did apply, GATT is a necessary and indispensable party.

Call Center first relies on the Supreme Court's decision in Grupo Dataflux to support its argument that the jurisdictional defect in this case cannot be cured. The Court, however, finds this reliance misplaced. In Grupo Dataflux, the question before the Supreme Court was "whether a party's post-filing change in citizenship can cure a lack of subject-matter jurisdiction that existed at the time of filing in an action premised upon diversity of citizenship." Grupo Dataflux, 541 U.S. at 568. The Supreme Court, in holding that a post-filing change in citizenship cannot cure such a jurisdictional defect, stated that it "has never approved a deviation from the rule articulated by Chief Justice Marshall in 1829 that '[w]here there is *no* change of party, a jurisdiction depending on the condition of the party is governed by that condition, as it was at the commencement of the suit.'" Id. at 574 (quoting Conolly v. Taylor, 27 U.S. (2 Pet.) 556, 565 (1829)). The Supreme Court noted that, unless it was willing "to manufacture a brand-new exception to the time-of-filing rule, dismissal for lack of subject-matter jurisdiction [was] the only option available . . . ." Id. at 574-75. Thus, in Grupo Dataflux, "[t]he purported cure arose not

from a change in the parties to the action, but from a change in the citizenship of a continuing party." Id. at 575. Because the Supreme Court found that this attempted jurisdictional cure did not give rise to an exception to the time-of-filing rule, the principles of "finality, efficiency, and judicial economy" articulated in Caterpillar could not justify a suspension of that rule.

In this case, however, the proposed jurisdictional cure is an exception to the time-of-filing rule that the Supreme Court repeatedly has recognized: the dropping of a party pursuant to Rule 21. Because this is not a "new exception," the language Call Center quotes from the Grupo Dataflux decision is inapposite here. Moreover, even in Grupo Dataflux, the Supreme Court reiterated the principle that "it is well settled that Rule 21 invests district courts with authority to allow a dispensable nondiverse party to be dropped at any time, even after judgment has been rendered. . . . Indeed. . . courts of appeals also have the authority to cure a jurisdictional defect by dismissing a dispensable nondiverse party." Id. at 573 (internal citations and quotation marks omitted).[6] Because the jurisdictional cure

[6]Call Center, quoting certain language in Caterpillar, seems to argue that the nondiverse party must be dropped before the entry of judgment. As seen from Supreme Court case law issued subsequent to Caterpillar, this is not the case. The logical conclusion of Call Center's argument would be that only the district courts could drop nondiverse parties, as such action must be done before trial is held or judgment entered. But as the Supreme Court has expressly stated, the courts of appeals also have the authority to cure a jurisdictional defect by dropping a nondiverse party. In the normal course of things, however, the courts of appeals hear cases after the district court has

proposed by Interline is to drop GATT pursuant to Rule 21, the Court finds Call Center's reliance on Grupo Dataflux to be misplaced.

Call Center next argues that Newman-Green, which recognizes the power of the federal courts to cure jurisdictional defects by dropping a nondiverse party pursuant to Rule 21, is distinguishable, and hence inapplicable, to this case for three reasons: (1) because in Newman-Green the request to drop the nondiverse party came from the plaintiff, not the defendants, the Supreme Court's decision there did no violence to the rule that the plaintiff is "the master of the complaint"; (2) because Newman-Green was not a removal case, the Supreme Court's decision there did not defeat the plaintiff's choice of forum; and (3) because Newman-Green was not a removal case, the Supreme Court's decision there did not do violence to the sovereignty of state courts or raise concerns of federalism.

With regard to Call Center's first argument, namely that in Newman-Green the request to drop the nondiverse party came from the plaintiff, the Court is not persuaded. Courts have allowed claims against nondiverse parties to be severed, and nondiverse parties to be dropped, even in situations where the request came

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held a trial or entered judgment. Therefore, the argument that the dropping of a nondiverse party to cure a jurisdictional defect must be done at the time of trial or judgment, cannot be correct. Instead, the Supreme Court requires that "the less-than-complete diversity which had subsisted throughout the action [be] converted to complete diversity between the remaining parties to the final judgment." Grupo Dataflux, 541 U.S. at 573.

from the defendants. See, e.g., Highland Capital Mgmt. LP. v. Schneider, 198 Fed. Appx. 41 (2d Cir. 2006). With regard to a plaintiff being "the master of the complaint," the Court recognizes that this principle is generally true. Nonetheless, Call Center, as the master of the complaint, must accept some responsibility for this case's procedural history. It was initially Call Center that identified GATT as a diverse party. When Interline was brought into this case, it sought removal to federal court, presumably based in part on Call Center's representations regarding GATT's status as a diverse party. In the third amended complaint, which was the operative complaint for the purposes of the Court's summary judgment decision, Call Center still identified GATT as a diverse party[7] and alleged that this Court had subject matter jurisdiction. (See Dkt. # 122 ¶¶ 2, 12.) Thus, it was Call Center's own allegations that made it appear as if this Court had subject matter jurisdiction. Consequently, in light of this background, the Court finds Call Center's argument regarding violence to "the master of the complaint" rule to be severely undercut and, ultimately, without merit.

Call Center's second and third arguments center around the

[7]The Court acknowledges that there has been some inconsistency with respect to GATT's state of incorporation. In the third amended complaint, Call Center alleged that GATT was a Texas corporation. On summary judgment, however, the parties, through their Local Rule 56 Statements, represented to the Court that GATT was an Oregon corporation.

fact that, because Newman-Green was not a removal case, it is inapplicable here. Again, the Court is not persuaded. To begin with, courts have applied the principles of Newman-Green to cases that were removed from state court. See, e.g., Highland Capital, 198 Fed. Appx. at 43.

Call Center, however, attempts to distinguish Highland Capital from this case by pointing out that, in Highland Capital, removal was proper because the jurisdictional spoiler was not added until after the removal to federal court had occurred, whereas here, removal was not proper ab initio because the nondiverse party, GATT, has always been a defendant in the case. Nonetheless, the Court has not found, and Call Center does not point to, case law requiring such a narrow reading of Newman-Green, namely, that Newman-Green, if applicable to removal cases at all, is applicable only where a nondiverse party was added after the case was properly removed to federal court. In fact, the case law seems to be otherwise. For example, in Caterpillar, complete diversity of citizenship did not exist among the parties at the time of removal, yet the Supreme Court applied the principles of Newman-Green. See Caterpillar, 519 U.S. at 75-76 (finding Newman-Green, although not a removal case, to be "instructive.").

Additionally, in cases with procedural backgrounds similar to this case's, courts have followed Newman-Green by severing and

remanding the claims against the nondiverse party. For example, Kunica v. St. Jean Financial, Inc., 63 F. Supp. 2d 342 (S.D.N.Y. 1999) involved a nearly identical situation to the one here, where: (1) the lawsuit, which was based solely on state law, was removed from state court; (2) there was not complete diversity of citizenship at the time of removal; (3) the defendants moved for summary judgment on the claims against them; (4) the court granted summary judgment in favor of the defendants; (5) after judgment entered in favor of the defendants, the plaintiff moved to remand the case back to state court, arguing for the first time that there was not complete diversity of citizenship; (6) the court, although finding that there was not complete diversity of citizenship, conducted an analysis under Newman-Green, Rule 21, and Rule 19; and (7) after deciding that one of the defendants was not indispensable under Rule 19, the court dismissed that defendant from the case and remanded to state court all the claims against him. Id. at 345, 348-51. Based on the above, the Court is unconvinced by Call Center's argument that an analysis under Newman-Green is inappropriate here, and thus remand to state court is required. In the Court's view, the case law demonstrates that it may and should apply Newman-Green to this case.

Having decided that the principles of Newman-Green should be applied to this case, the Court next must determine whether the

relief sought by Interline is proper. Rule 21 permits the Court to drop a party or sever any claim against a party. The Court may use Rule 21 to preserve jurisdiction by dropping a nondiverse party only if the nondiverse party is not required (or "indispensable") under Rule 19(b). As noted above, to determine whether a party is indispensable under Rule 19(b), the Court must consider whether a judgment rendered in the party's absence might prejudice that party or other parties to the action; the extent to which any prejudice could be alleviated; whether a judgment in the party's absence would be adequate; and whether the plaintiff would have an adequate remedy if the court dismissed the party from the case.

With regard to Call Center's argument that GATT, as a party to the contract at issue in this case, cannot be dropped because a party to a contract in a breach of contract lawsuit is "the paradigm of an indispensable party," the Court is unpersuaded. The Second Circuit recently has warned that "a bright-line rule that all parties to a contract are indispensable. . . . is inconsistent with Rule 19(b)'s flexible standard." CP Solutions, 553 F.3d at 159. Instead, the Court must evaluate the extent to which dropping GATT at this point in time would prejudice Call Center or deprive Call Center of an adequate remedy.

Call Center maintains that, if the Court were to drop GATT, it would "lose any legally cognizable interest in a successor

liability claim against Interline" because "Interline's successor liability is based solely on the predecessor GATT's breach of contract . . . ." (Dkt. # 226, pp. 6-7.) Although this assertion, absent any other considerations, might be valid, the Court's concern here is that Call Center presents an argument based on the assumption that Interline's status as a successor company, and hence its liability on the contract, are still issues to be decided. That is to say, Call Center now asks the Court to render a decision in a vacuum and proceed as if there had been no prior rulings in this case. The Court sees no reason to do so. The Court already determined on summary judgment that Call Center has presented insufficient evidence to create a genuine issue of material fact as to whether Interline was a successor to GATT under any of the legal theories alleged by Call Center. Therefore, the Court is unmoved by the argument that dropping GATT would prejudice Call Center by preventing it from obtaining relief from Interline.

Call Center also argues that dropping GATT from this case would cause this Court to lose subject matter jurisdiction. This argument appears to be based on the assumption that, when bringing a successor liability claim, a plaintiff always must name both the predecessor entity and the successor entity as defendants. The Court, however, sees no basis for this assumption under Connecticut law, which provides the substantive

legal theories in this case. The Court has found a number of cases brought under Connecticut state law, both from the Connecticut Superior Court and within this district, in which plaintiffs directly sued the alleged successor entity without naming the alleged predecessor entity as a defendant. See Collins v. Olin Corp., 434 F. Supp. 2d 97 (D. Conn. 2006); Infra-Metals, Co. v. Topper & Griggs Group, Inc., No. Civ.A. 3:05-CV-559(JCH), 2005 WL 3211385 (D. Conn. Nov. 30, 2005); Pesce v. Overhead Door Corp., No. Civ.A.2:91CV00435(JCH), 1998 WL 34347073 (D. Conn. Aug. 17, 1998); Southern Connecticut Gas Co. v. Waterview of Bridgeport Ass'n., Inc., No. CV054005335, 2006 WL 1681005 (Conn. Super. Ct. June 1, 2006); Lynch v. Infinity Outdoor, Inc., No. CV010453323S, 2003 WL 21213708 (Conn. Super. Ct. May 7, 2003); Alken-Ziegler, Inc. v. Waterbury Headers Corp., No. CV000159455, 2001 WL 237099 (Conn. Super. Ct. Feb. 20, 2001); Pastorick v. Lyn-Lad Truck Racks, Inc., No. CV 960562426S, 1999 WL 608674 (Conn. Super. Ct. Aug. 3, 1999); National Grange Mut. Ins. Co. v. Montgomery Elevator, No. CV-91-0501948S, 1994 WL 547747 (Conn. Super. Ct. Sept. 22, 1994).

A successor liability case, by its nature, presumes that the predecessor entity does not function or exist anymore, a fact which causes the plaintiff to sue the entity that allegedly has stepped in the shoes, and assumed the liability, of the predecessor. The Court thus discerns no reason why Call Center

could not have sued only Interline for breach of contract based on its liability as a successor to GATT, or why this Court would not have original jurisdiction over such an action pursuant to 28 U.S.C. § 1332.

The Court, given the current circumstances of this case, must evaluate the prejudice to the parties if GATT were dropped. Because Interline is the party requesting this relief, any prejudice such action would cause Interline "is prejudice [Interline] is willing to bear and therefore should not . . . trouble[] the district court." CP Solutions, 553 F.3d at 159. The potential prejudice to Call Center is that its default judgment against GATT would be vacated, which normally would weigh heavily in Call Center's favor. Here, however, this prejudice is lessened by the fact that GATT, while apparently still technically incorporated under Delaware law, is a defunct company that no longer conducts business, retains employees, or has assets. Thus, even if the Court were to preclude Call Center from obtaining relief from GATT, it would simply be depriving Call Center of "the chance to procure blood from a stone." Id. at 160.[8]

[8]Call Center undoubtedly realizes this, i.e., that the value of a default judgment against GATT, by itself, is negligible. Why else would Call Center ask the Court to vacate a $560,576.22 judgment in its favor and remand the case to state court? It appears that Call Center, having received an adverse summary judgment decision with regard to its claim against Interline, now wishes to start anew with a different judge in a different court in the hope that it obtains a different outcome.

The Court is even more unmoved by this potential prejudice when considering what would happen to this action if GATT remains as a defendant. If the Court does not drop GATT, then the federal courts do not, and never did, have subject matter jurisdiction over the case. All the proceedings before the Court, which now have been ongoing for more than six years, would essentially count for nothing. All the prior decisions of this Court, including a final summary judgment ruling, would be rendered a nullity. Interline, after receiving a favorable summary judgment decision from this Court, would be forced to defend itself again in a different court on the same issues and, possibly, encounter rulings inconsistent with those from this Court. The Court believes that the "considerations of finality, efficiency, and economy" noted by the Supreme Court in Caterpillar have indeed "become overwhelming." Id.

The Court next turns to the issue of whether any potential prejudice caused by dropping GATT can be alleviated, or whether Call Center would have an adequate remedy if GATT were dropped. In the Court's view, because the issue of successor liability has already been adjudicated, this issue hinges solely on whether dropping GATT would preclude Call Center from obtaining relief from GATT. The Court does not believe that precluding Call Center from obtaining a judgment against GATT would be of much consequence, considering that, as noted above, a judgment against

GATT is not worth much. Indeed, by its own motion, Call Center actually requests that a $560,576.22 default judgment entered in its favor be vacated. It is clear that Call Center does so in an attempt to have another bite at the apple on remand, i.e., have another attempt to pursue its successor liability claim against Interline. Nevertheless, the Court should attempt to alleviate the potential prejudice against Call Center and provide it with an adequate remedy against GATT.

Call Center argues that if the Court were to vacate the judgment against GATT and drop GATT without a remand, then its claim against GATT would be time-barred. Call Center also argues that if the Court dropped GATT while leaving the default judgment against GATT in place, the judgment against GATT would be void for lack of subject matter jurisdiction and open to collateral attack. The Court certainly would not exercise the second option listed by Call Center; in fact, the Court seriously doubts whether it can dismiss a party from a case and, at the same time, enter a judgment against that party. With regard to the first option, vacating the judgment against GATT and dropping GATT without remand, the Court is not persuaded that the claim against GATT would be time-barred, as Connecticut statute provides a failsafe for actions that have been dismissed for lack of jurisdiction. See Conn. Gen. Stat. § 52-592.

Call Center, however, ignores a third option—vacating the

judgment against GATT and remanding the claim against GATT to state court. This case originally was filed in state court, and initially GATT was the only defendant. Call Center offers no reason why this Court cannot do here what the district court did in Kunica, namely, dismiss the nondiverse defendant from the case; remand to state court all claims against the nondiverse defendant; and retain jurisdiction over the claims against the remaining defendant in order to preserve the "integrity" of the summary judgment order with regard to that defendant. This would afford Call Center the opportunity to pursue its claim against GATT in state court while preserving the Court's summary judgment decision with regard to Interline. Additionally, it is unlikely that Call Center would suffer undue hardship in obtaining a default judgment against GATT in state court.[9] At no point has GATT ever had counsel enter an appearance on its behalf or otherwise defended itself against Call Center's allegations. Given GATT's status, it is highly doubtful that this will change.

In the Court's view, any prejudice to Call Center caused by dropping GATT from this action will be alleviated by remanding to state court the breach of contract claim against GATT. This will allow Call Center to obtain in state court the relief to which it is entitled from GATT, but preserve the integrity of this Court's

[9] In fact, it is the Court's understanding that Call Center obtained a default judgment against GATT in state court before it added Interline as a defendant.

judgment with regard to the successor liability claim against Interline. The Court thus finds that GATT is not indispensable under Rule 19(b). Consequently, the Court shall vacate the default judgment against GATT, dismiss GATT from this case, and remand the breach of contract claim against GATT to state court.

CONCLUSION

For the foregoing reasons, Interline's motion for reconsideration **(Dkt. # 223)** is **GRANTED**, and Call Center's motion to vacate and remand **(Dkt. #s 209 & 210)** is **GRANTED in part and DENIED in part.**

The Court hereby ORDERS the following:

(1) the portion of the Court's judgment of February 19, 2009 whereby a default judgment entered in favor of Call Center Technologies, Inc. and against Grand Adventures Tour & Travel Publishing Corporation, Inc. in the amount of $560,576.22, is VACATED;

(2) pursuant to Rule 21 of the Federal Rules of Civil Procedure, Grand Adventures Tour & Travel Publishing Corporation, Inc. is DISMISSED from this action;

(3) the breach of contract claim against Grand Adventures Tour & Travel Publishing Corporation, Inc. is REMANDED forthwith to the Connecticut Superior Court, Judicial District of Danbury; and

(4) the portion of the Court's judgment of February 19, 2009 whereby summary judgment entered in favor of Interline Travel & Tour, Inc. on all claims against it in the third amended complaint shall remain in effect.

SO ORDERED this 19th day of November, 2009.

/s/ DJS

DOMINIC J. SQUATRITO
UNITED STATES DISTRICT JUDGE